

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,
Plaintiff,**

v.

**PULMONARY SPECIALISTS OF TYLER
P.A. and SLEEP HEALTH DME, LLC,
Defendants.**

CIVIL ACTION NO.

6:18-cv-00338-RWS

CONSENT DECREE

THIS CONSENT DECREE is made and entered into by and between Plaintiff, United States Equal Employment Opportunity Commission (“Plaintiff” or “EEOC”), and Defendants Pulmonary Specialists of Tyler P.A. and Sleep Health DME LLC (“Defendants”). This Consent Decree resolves the claims of Plaintiff EEOC in the Original Complaint filed in the above-referenced Civil Action No. 6:18-CV-00338-RWS. EEOC initiated its lawsuit under the Americans with Disabilities Act, to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Angela Abler, who was adversely affected by such practices.

The EEOC and Defendants agree to compromise and settle the differences embodied in the Complaint filed by EEOC, and intend that the terms and conditions of the compromise and settlement be set forth in this Consent Decree ("Consent Decree").

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court

finds appropriate, and therefore, it is ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction of the subject matter of this action and the parties, venue is proper, and all administrative prerequisites to the filing of this action have been met.

2. This Consent Decree resolves all issues raised in EEOC's Complaint. EEOC and Angela Abler waive further litigation of all issues raised in the Original Complaint. EEOC expressly reserves its right, however, to process and litigate any other charges which may now be pending, or which may in the future be filed, against Defendants.

3. During the term of this Consent Decree, Defendants, its officers, agents, successors and other persons in active concert or participation with it, or any of them, are enjoined from any employment practice that discriminates on the basis of disability with respect to hiring, promotion, wages, termination, or any other employment action, and Defendant further agrees not to retaliate in any way against any person because of opposition to any practice declared unlawful under the Americans with Disabilities Act, as amended, or because of the filing of a charge, giving testimony, or assisting or participating in any manner in any investigation, proceeding or hearing.

4. The duration of this Consent Decree shall be three (3) years from its effective date. The effective date of this Consent Decree will be the date when it is signed and filed by the Court. This Court shall retain jurisdiction of this action during the period of this Consent Decree, and may enter such other and further relief as it deems appropriate to ensure implementation and enforcement of the provisions of this Consent Decree.

5. Defendants agree to pay to Angela Abler the full and final sum of \$30,000.00, in compromise and satisfaction of all claims. The parties agree that the amount of \$4,000.00 represents backpay under the ADA, and is subject to ordinary withholding. A W-2 shall issue for this amount. The remainder of \$26,000.00 represents all other damages. No withholding will be

made from this amount and a 1099 will issue. Payment shall be mailed directly to Angela Abler, at the address below:

Angela K. Abler
5600 Ramblewood Lane
Whitehouse, Texas 75791

A copy of the settlement check, tax documents such as a W-2 and 1099, and any accompanying transmittal documents will be forwarded to the EEOC to the attention of Suzanne M. Anderson, EEOC, 207 S. Houston Street, Third Floor, Dallas, TX 75202.

6. The payments referenced in paragraph 5 shall be made within thirty (30) days after the effective date of this Consent Decree. Defendant agrees to report to the EEOC within thirty (30) days of entry of this Consent Decree regarding its compliance with this paragraph.

7. Disability Discrimination Policy: Defendant Sleep Health DME, LLC agrees within sixty (60) days of the entry of this Consent Decree to implement a written disability discrimination policy, which shall be disseminated to all employees at Sleep Health DME, LLC. Pulmonary Specialist of Tyler, PA agrees to utilize a written disability discrimination policy, beginning 10 days after the effective date of consent decree, which shall remain in force during the term of the consent decree. Such policy shall include the following: a provision describing the prohibition of disability discrimination, a provision outlining the ADA requirement that employers are prohibited from disclosing an employee's confidential medical information, a provision informing employees of their rights to request a reasonable accommodation; and a provision informing employees of the individuals to whom complaints of disability discrimination can be made.

8. Confidential Medical Information: Defendants agree that it will comply with the ADA's requirement prohibiting an employer from disclosing an employee's confidential medical

information without the employee's express authorization.

9. Medical Questionnaire: Defendants agree they will no longer use the Medical Questionnaire completed by Ms. Abler.

10. Training: For each year that this Consent Decree is in effect, Defendant, Sleep Health DME agrees to conduct annual training for all hiring officials and Human Resources employees, advising them of the requirements and prohibitions of the Americans with Disabilities Act. The training will inform the employees of the complaint procedure for individuals who believe that they are being discriminated against by Defendant for disability discrimination. This annual training will also advise hiring officials and human resource officials of the consequences imposed upon Defendant for violating the Americans with Disabilities Act. The training shall be at least one (1) hour in duration. No less than ten (10) days before the training is conducted, Defendant agrees to give written notice to the EEOC as to the date and location of the training, the name and qualifications of the person providing the training and the substance of the training. All materials used in conjunction with the training shall be forwarded to the EEOC. Within twenty (20) days following the training, Defendant shall submit to the EEOC confirmation that the training was conducted, and a list of attendees

Defendant Pulmonary Specialists of Tyler, PA also agrees to implement 1 hour of annual training on the Americans with Disabilities Act for all officers and any personnel involved in human resources functions, including but not limited to the implementation of its ADA policy, recruitment and hiring. This 1 hour of training shall be implemented within ninety (90) days of the effective date of the Consent Decree.

11. Notice: Defendants agree to post the Notice attached hereto as Attachment "A" on an employee bulletin board or some other prominent place in all of Defendants' facilities for a

period of three (3) years.

12. Non-Disclosure Agreement: Defendants, Pulmonary Specialists of Tyler, PA, and Sleep Health DME, LLC also agree to not to disseminate, directly or indirectly, to any other prospective employer, any of the facts or circumstances relating to the filing and resolution of the charges.

13. Defendants will, within thirty (30) days of the effective date of this Consent Decree, send a written report to the EEOC confirming that Attachment "A" was posted in compliance with this Consent Decree.

14. Plaintiff EEOC shall have the right to ensure compliance with the terms of this Consent Decree, and may (a) conduct inspections of the facilities of Sleep Health DME; (b) interview Defendants' employees; and, (c) examine and copy relevant documents, upon written notice of at least thirty (30) days provided to counsel for Sleep Health DME.

15. If Defendants fail to tender payment or otherwise fail to timely comply with the terms of paragraphs above, Defendants shall, as applicable:

- a. Pay interest at the rate calculated pursuant to 26 U.S.C. Section 6621(b) on any untimely or unpaid amounts; and
- b. Bear any additional costs incurred by the EEOC caused by the non-compliance or delay of the Defendants.

16. All reports to the EEOC required by this Consent Decree shall be sent to Suzanne Anderson, Supervisory Trial Attorney, EEOC, 207 S. Houston St., 3rd floor, Dallas, TX 75202.

17. Neither the EEOC nor Defendants shall contest the validity of this Consent Decree nor the jurisdiction of the federal district court to enforce this Consent Decree and its terms or the right of either party to the Consent Decree to bring an enforcement action upon breach of any term

of this Consent Decree by either such party. Nothing in this Decree shall be construed to preclude the EEOC from enforcing this Decree in the event that Defendants fail to perform the promises and representations contained herein. The EEOC shall be authorized to seek compliance with the Consent Decree through civil action in the United States District Court in the Eastern District of Texas, Tyler Division. The EEOC also reserves the right to seek contempt sanctions for non-payment and non-compliance with this Court Order.

18. Each party shall bear its own costs, including attorneys' fees incurred in this action.

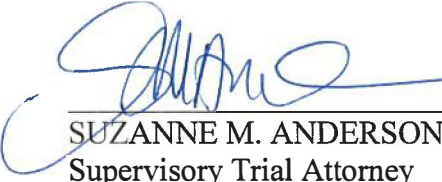
AGREED AS TO FORM AND SUBSTANCE:

FOR THE PLAINTIFF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION:

JAMES LEE
Acting General Counsel

GWENDOLYN Y. REAMS
Associate General Counsel

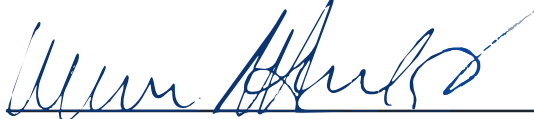
ROBERT A. CANINO
Regional Attorney
Oklahoma State Bar No. 011782



SUZANNE M. ANDERSON
Supervisory Trial Attorney
Texas State Bar No. 14009470

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Dallas District Office
207 Houston, 3rd Floor
Dallas, Texas 75202
(214) 253-2746
(214) 253-2749 (f)


FOR THE DEFENDANT:



CONSENT DECREE

WILLIAM HOMMEL, JR.
William S. Hommel, Jr.
State Bar No. 09934250
Hommel Law Firm
1404 Rice Road, Suite 200
Tyler, Texas 75703
903-596-7100
469-533-1618 Facsimile

So ORDERED and SIGNED this 15th day of April, 2019.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE

ATTACHMENT A

THIS NOTICE WILL BE CONSPICUOUSLY POSTED FOR A PERIOD OF THREE (3) YEARS AT THIS FACILITY AND IN ALL PLACES WHERE EMPLOYMENT NOTICES ARE POSTED. IT MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL.

This notice is being posted pursuant to a Consent Decree with the Equal Employment Opportunity Commission ("EEOC"), based upon a Charge of Discrimination alleging disability discrimination under the Americans with Disabilities Act as amended ("ADA").

Federal law requires that there be no discrimination against any employee or applicant for employment because of the individual's race, color, religion, sex, national origin, age (40 and over) or disability, with respect to hiring, promotion, firing, compensation, accommodation or other terms, conditions or privileges of employment. Federal law also prohibits retaliation against any employee who files a charge of discrimination, or who cooperates with the government's investigation of a charge.

An employer cannot discriminate against qualified applicants and employees on the basis of disability. Under the Americans With Disabilities Act, an individual with a disability is a person who has (a) a physical or mental impairment that substantially limits one or more major life activities; (b) a record of an impairment or (c) is regarded as having such an impairment. The ADA also prohibits discrimination against a person because of their association or relationship with an individual with a known disability. This prohibition covers all aspects of the employment process, including:

- | | |
|------------------------|------------------------|
| * application | * promotion |
| * testing | * medical examinations |
| * hiring | * layoff/recall |
| * assignments | * termination |
| * evaluation | * compensation |
| * disciplinary actions | * leave |

Further, under the ADA an employer must make a reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee with a disability unless it can show that the accommodation would cause an undue hardship on the operation of its business. Some examples of reasonable accommodation include:

- Reassignment to a vacant position;
- Making existing facilities used by employees readily accessible to, and usable by, an individual with a disability;
- Job restructuring;
- Modifying work schedules; and
- Acquiring or modifying equipment or devices.

An employee has the right, and is encouraged to exercise that right to report allegations of discrimination in the workplace. An employee may do so by notifying _____. Employees who do not wish to go to _____ may instead report to any supervisor or manager. Supervisors and managers who are informed of a complaint or allegation of discrimination must immediately notify _____. An employee, either alternatively or in addition to reporting such an allegation to company officials, may contact the Equal Employment Opportunity Commission for the purposes of filing a charge of employment discrimination. The address and telephone number of the nearest EEOC office is 207 South Houston Street, Third Floor, Dallas, Texas 75202; (214) 253-2700.

Any report of discrimination will be thoroughly investigated, with appropriate disciplinary action, up to and including termination, be taken against any person(s) found to have engaged in such conduct.

THIS NOTICE WILL REMAIN POSTED FOR A PERIOD OF THREE (3) YEARS AND NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL.

Date

Pulmonary Specialists of Tyler, P.A.

Date

Sleep Health DME, LLC